

Surrogate motherhood and Spanish homosexual couple (III)

You might remember my last post on surrogate pregnancy, where I informed about a 2009 decision of the Spanish Dirección General de los Registros y el Notariado ordering registration of a birth certificate issued in the USA. The document concerned the parenthood of two children born in San Diego to a surrogate mother and a homosexual Spanish couple; the entry listed the couple as father of the twins. The saga goes on: on Friday, the Tribunal de Primera Instancia No. 15 of Valencia, at the request of the Public Prosecutor, declared the entry null.

In its ruling, the judge states that children are the result of a pregnancy by substitution, which is not allowed by Spanish law; and that their filiation has to be determined by birth. In what is quoted as his own words, «La ley española prohíbe expresamente que la filiación en estos casos no se inscriba a favor de la persona que los ha parido».

With regard to the discrimination statement put forward by the lawyer of the couple, the judge points out that the children can not be registered as hers not because both parents are men, but because they were born to another person: “This legal consequence would equally apply to a homosexual- male and female-couple, man or woman alone, or a heterosexual couple, because the law does not distinguish gender in such cases”. From the Spanish legal point of view, the crucial fact in order to determine filiation is the giving of birth.

As for the argument that registration must be allowed in the best interests of the children, the court admits it is not irrelevant, but states that “the end does not justify the means, and the Spanish legal system has sufficient instruments to achieve consistency”.

The couple has decided to appeal the ruling before the Audiencia Provincial.